***THE HON'BLE MR JUSTICE V.V.S.RAO**

+WRIT PETITION No.16553 of 2005

%Dated 20-07-2006

Yellamma and others.

… Petitioners.

VERSUS

$ State of A.P., rep.by District Collector, Ranga Reddy District, Lakdikapool, Hyderabad, and another.

… Respondents.

! Counsel for Petitioners: Mr.B.Venkat Rama Rao.

^Counsel for Respondent: G.P for Revenue

<GIST:

>HEAD NOTE:

? Cases referred

1. 1990(1) An.W.R.205 = 1989 (3) ALT 14 (NRC)

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Dated:20.07.2006

Between:

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…Petitioner

and

State of A.P., rep.by District Collector, Ranga Reddy Dist., Lakdikapool, Hyderabad, and another.

…Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.16553 of 2005

ORDER:

The petitioners are legal heirs of the assignees of agricultural land in Survey No.182 situated at Doolapally Village of Qutbullapur Mandal, Ranga Reddy District. They allege that the land admeasuring about Acs.2.00 each was assigned to the predecessors in title of the petitioners for the purpose of agriculture, and after the demise of their predecessors, the petitioners allegedly succeeded to the property and cultivating the same. The second respondent initiated action under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'), and passed orders in proceedings dated 21.10.1998, resuming the land on the ground that

the assignees alienated the land in contravention of Section 3(2) of the Act. Aggrieved by the same, the petitioners filed a Writ Petition, being W.P.No.11154 of 1999. The learned Single Judge dismissed the same on 14.06.1999. The petitioners then filed a Writ Appeal, being W.A.No.1780 of 1999.

Before the Division Bench, the petitioners contended that even if the orders of the second respondent for resuming the land are upheld, they have a right to seek reassignment under Section 4 of the Act. After noticing the said provision, the Division Bench disposed of the Writ Appeal on 07.12.1999 directing the revenue authorities to pass appropriate orders in accordance with law for reassignment of the land in favour of the petitioners.

The petitioners thereafter approached the District Collector by making a representation, dated 19.01.2000. The second respondent sent a report on 25.01.2001 to the District Collector in response to which the latter again vide order dated 05.01.2002 directed the Mandal Revenue Officer to take necessary action. The District Collector also brought to the notice of the Mandal Revenue Officer the decision of this Court in **P.Gopal Reddy v. Mandal Revenue Officer**[1], wherein it was held that when agricultural property became urban property fit for construction, the original assignee is not entitled for reassignment. At that stage, the petitioners filed the instant writ petition alleging that though the District Collector directed the Mandal Revenue Officer to take appropriate action, the respondents have not reassigned the land.

Learned Counsel for the petitioners placed strong reliance on Section 4 of the Act as well as the report of the Mandal Revenue Officer dated 25.01.2001 in support of the contention that there cannot be any prohibition to reassign the land to the petitioners in accordance with Section 4(1)(b) of the Act. According to the learned Counsel even after the construction of houses and factories in Survey No.182, still an extent of Acs.7.35 guntas of land is available for assignment.

Respondents have not filed counter affidavit. However, learned Assistant Government Pleader for Revenue (Assignment) strenuously contends that as per the report of the Mandal Revenue Officer, the land ceased to be the agricultural land, and therefore, there cannot be any reassignment.

As strong reliance is placed on Section 4(1)(b) of the Act, it is

necessary to notice the said provision.

> **4. Consequences of breach of provisions of Section 3:-**
>
> (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may by order--
>
> (a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and
>
> (b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment of landless poor persons in accordance with the rules for the time being in force:
>
> Provided that the assigned land shall not be so restored to the original assignee or his legal heir, more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.

It is well settled Rule of interpretation that a clause or subsection in a Section cannot be read in isolation nor it is permissible for the Court to ignore the plain language and the terminology used by the Legislature while conferring a benefit or taking of a benefit from a person. Applying the said principle, Section 4(1)(b) of the Act must be read as enabling an assignee, who suffered an order of resumption under Section 4(1)(a) of the Act, only when the land which was resumed is available for assignment and when it is reasonably practicable to restore the land to the assignee or the legal heir. There could be number of situations when it may not be reasonably practicable to restore the land to the assignee even if the land is available. In **P.Gopal Reddy v. Mandal Revenue Officer** (supra), His Lordship Justice K.Ramaswamy (as His Lordship then was) considered a similar question. Dealing with this aspect of the matter, it was laid down as under.

> 10. Ejectment of the persons in possession of the assigned lands under the void transfer is mandatory save as

covered by Sec.3(5) of the Act. The Collector or the authorized officer is enjoined to have the transferee ejected and restitute possession only once to the assignee or his legal heirs if available. The restitution to the assignee or his heirs, in the first instance, despite the contravention by the assignee, is mandatory. In case he commits contravention once over, it is mandatory that the State shall resume the land, but in either case, the assignment of the said land "shall be to another landless poor person for the purpose of cultivation or in case of assignment for house site, for the purpose of construction of house for residence which is a fundamental right under Article 19(1)(e). The petitioner, thereby, is normally entitled to restoration of possession. The question then emerges is whether the Collector is justified in his failure to restitute the land to the petitioner.

11. It is seen from the undisputed facts that though the land in question was assigned only for the purpose of cultivation, it no longer subserves the original purpose viz., cultivation as it now became the Urban property fit for construction of houses. In fact, the transferee laid 32 plots and sought approval from the second respondent. By virtue of the changed circumstances, the petitioner will no longer be in a position to cultivate the assigned land. His transfer for the purpose of house sites again would be in contravention of not only under the terms of the grant, but also is void under the Act. Thereby, the petitioner cannot be restituted the assigned lands.

In the case on hand as seen from the report of the Mandal Revenue Officer, dated 25.01.2001, on which reliance is placed, the land in Survey No.182 has already been put to non-agricultural use and about half of the area is covered by factories and residential houses. In such a situation, it is always reasonable to draw an inference that the land has acquired urban characteristics and is no more fit for being used for agricultural purpose. Therefore, this Court does not find any infirmity in the action of the second respondent in not reassigning the land to the petitioners. If the petitioners continue to be below poverty line and are eligible for assignment of agricultural land, they may approach the second respondent with a proper application for assignment of any other suitable land. As and when such application is made, the same may be considered in accordance with the Rules and Regulations and various Government Orders for assignment of the land.

The Writ Petition, with the above observations, is accordingly

dismissed. No costs.

(V.V.S.RAO, J)

20.07.2006
vs

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[1] 1990(1) An.W.R.205 = 1989 (3) ALT 14 (NRC)